

FISCAL PROCEDURES AND CONTROLS

Summary of Issue	1
Presentation of the cost of intelligence in the President's budget	2
Current status	2
Alternative recommendations	3
Public disclosure of the cost of intelligence	5
Current status	5
Alternative recommendations	7
Authorization of funds for the intelligence agencies	9
Current status	9
Alternative recommendations	9
Appropriation of funds for the CIA	11
Current status	11
Alternative recommendations	11
Control of transfers of funds to and from intelligence agencies in the Department of Defense	13
Current status	13
Alternative recommendations	13
Appendices	14
1. "The Central Intelligence Agency: Oversight and Accountability"	14
2. "Fiscal Oversight of the Central Intelligence Agency: Can Accountability and Confidentiality Coexist?"	38
3. Excerpts from the report of the Senate Special Committee to Study Questions Relating to Secret and Confidential Government Documents	90
4. Excerpts from the Rockefeller Commission report	92

5. Floor debate and vote on the Proxmire amendment; June 4, 1974 94
6. Articles from the Washington Post and New York Times 108
7. Floor debate and vote on the Giaimo amendment; October 1, 1975 110
8. Section 6(a) of the Central Intelligence Agency Act of 1949 (50 U.S.C. 403f) 130
9. Excerpts from P.L. 93-437 concerning transfer authority for the Department of Defense 132

Summary of Issue

By law and tradition, the Congress has made little use of its "power of the purse" to control and supervise the organization and operations of the intelligence agencies. The very limited role of the Congress is attributable to (1) the manner in which the President's budget is organized and submitted to the Congress, (2) the exemption of the intelligence agencies from the requirement of periodic authorizations, (3) the secrecy surrounding annual allocations of funds for intelligence agencies and activities, and (4) the unique and statutory fiscal flexibility enjoyed by the CIA.

With regard to fiscal controls over the intelligence community, the Committee may wish to consider recommendations in the following areas:

1. identification of the cost of intelligence--by agency, activity, or as a single total--in the President's annual budget;
2. public disclosure of some information concerning the annual cost of intelligence;
3. a requirement that intelligence agencies and activities be subject to periodic Congressional authorization;
4. a requirement that funds for the CIA be appropriated annually and specifically for its use; and
5. limitations on the statutory authority of the CIA and other intelligence agencies to receive money in the form of transfers from funds appropriated for other agencies.

Appendices 1 and 2 contain useful articles on these issues.

A related issue, to be considered separately, is whether additional authority should be given to the General Accounting Office to conduct audits and studies for the Congress.

Presentation of the cost of intelligence in the President's budget

Current status

The annual budget submitted by the President to the Congress is uninformative on the total cost of intelligence and on the cost of individual intelligence agencies and activities.

The massive budget appendix contains no mention of the following:

- Central Intelligence Agency
- Defense Intelligence Agency
- National Security Agency
- United States Intelligence Board
- President's Foreign Intelligence Advisory Board
- the intelligence components of the armed services

The budget submitted for the Department of State contains no references to intelligence or to the Department's Bureau of Intelligence and Research.

The budget submitted for the Federal Bureau of Investigation contains no references to intelligence or counter-intelligence. It does include categories for "Field investigations" and for "Security and criminal investigations: (a) Coordination, (b) Maintenance of investigative records and communications systems, (c) Field investigations."

The budget submitted for the Drug Enforcement Administration does contain an "Intelligence" category.

The budget submitted for the Internal Revenue Service contains no references to intelligence. It does include categories for "Internal audit and security" and "Tax fraud and special investigations."

The budget submitted for the Energy Research and Development Administration contains no references to intelligence. It does include a category for "National Security: ... (c) Nuclear materials security."

There is a budget submitted for the salaries and expenses of the National Security Council.

Beginning in March, 1974, the Director of Central Intelligence has submitted an annual Foreign National Intelligence Program (FNIP) to subcommittees of the House and Senate Appropriations and Armed Services Committees. The FNIP includes a single budget total for the CIA, and single budget totals for several program categories (which are composites of individual programs of the Departments of State and Defense). The FNIP is a reorganized presentation of the intelligence budgets submitted to OMB by State, Defense, and CIA. Staff research to date indicates that the FNIP is not an independent evaluation and revision of the foreign intelligence budget by the DCI.

Alternative recommendations

The absence of specifically identified intelligence costs in the President's budget minimizes public and Congressional knowledge of intelligence costs. However, detailed information will presumably be supplied upon request by the appropriate Congressional committees. Also, it is often difficult to allocate the costs of activities and programs which serve multiple purposes, only one of which is intelligence. For these reasons, the Committee may recommend no changes in the content and format of the President's budget.

Alternatively, to better inform the Congress and the public, the Committee may consider several possible recommendations.

A. The President's budget shall include one or more of the following format changes:

1. single budget totals for the following:

Central Intelligence Agency  
United States Intelligence Board  
President's Foreign Intelligence Advisory Board

2. within the budgets for their parent departments and agencies, single budget totals for the following:

Bureau of Intelligence and Research (State)  
Defense Intelligence Agency (Defense)  
National Security Agency (Defense)  
Defense Investigative Service (Defense)  
Army Security Agency (Defense)  
Army Intelligence Command (Defense)  
Naval Intelligence Command (Defense)  
Office of the Air Force Assistant Chief of Staff,  
Intelligence (Defense)

3. single budget totals for the intelligence activities of the following:

Federal Bureau of Investigation  
Internal Revenue Service  
Energy Research and Development Administration

4. more detailed budget submissions for any or all of the above agencies and programs

5. incorporation of the DCI's Foreign National Intelligence Program into the President's budget.

B. In addition to or instead of requiring the submission of budget totals for intelligence by agency, the Committee may recommend that the President's budget include a breakdown of proposed intelligence

costs by program or type of activity, the specific categories to be determined by the House and Senate Appropriations Committees in consultation with the DCI and the Director of OMB.

C. The Committee may recommend that these budgetary figures be submitted:

1. as part of the President's budget and therefore available to the public, or
2. as a separate, classified appendix to the President's budget.

D. The Committee may recommend that the DCI's Foreign National Intelligence Program be redefined by directing the DCI to prepare an independent evaluation and revision of intelligence community spending plans, to be submitted to the President at the same time the individual intelligence agencies submitted their proposed budgets.

Public disclosure of the cost of intelligenceCurrent status

Because of the manner in which the President's budget is submitted and subsequently considered by the House and Senate, the costs of intelligence are not compiled or made public. For example, although funds are appropriated for the Department of Defense and the Department of Justice, neither the Congress nor the public is informed as to what funds are intended for use by NSA or for the intelligence activities of the FBI.

Further, neither the Congress as a whole nor the public learns how much money is designated each year for the CIA, because of the unique statutory arrangements which permit the CIA to receive its funds by transfers from the accounts of other agencies.

Certain members of the House are more fully informed about intelligence costs and, in principle, the remaining members could inform themselves under House Rule XI(e)(2), which provides that--

All committee hearings, records, data, charts, and files shall be kept separate and distinct from the congressional office records of the Member serving as chairman of the committee; and such records shall be the property of the House and all Members of the House shall have access thereto.

This paragraph derives from section 202(d) of the Legislative Reorganization Act of 1946, and was made a part of the rules on January 3, 1953.

The practice of the House, however, has been to strongly discourage, if not formally deny, access to national security information by members not serving on the subcommittees with primary jurisdiction. The question of access by members of Congress to such information will be considered separately. For present purposes, it is sufficient to note that the traditions of the House have severely limited the information available to the Congress and, therefore, to the public.

Proposals have been made, and considered by both the House and the Senate, to make public some information concerning the annual costs of intelligence.

In 1973, such a recommendation was made by the Senate's Special Committee to Study Questions Related to Secret and Confidential Documents. The Special Committee recommended that the Department of Defense appropriations bill contain a single dollar total for the primary agencies engaged in foreign intelligence activities. (see Appendix 3)

In June of this year, the Rockefeller Commission recommended that the Congress carefully consider whether all or part of the CIA budget should be made public. (see Appendix 4)

On June 4, 1974, Senator Proxmire offered a floor amendment to S. 3000--a defense procurement authorization bill--to require that the Director of Central Intelligence transmit to the Congress an annual, unclassified report providing the total amount requested for the "national intelligence program" in the budget submitted by the President. Had it been adopted, the Proxmire amendment would have required a single total for all foreign intelligence activities, rather than totals for one or more specific agencies or activities. After extended debate, the amendment was defeated by a rollcall vote of 33 to 55. (for the text of the floor debate, see Appendix 5)

In late September of this year, the House Appropriations Committee considered an appropriations bill for the Department of Defense which had been reported by its Defense Subcommittee. On September 25th, Mr. Giaimo, a member of this Committee, moved that the bill be amended to include as a line item the total amount intended for the CIA. The Giaimo amendment was defeated by a vote of 18 to 34. Mr. Obey then moved that the same total be disclosed to the full Appropriations Committee. The Obey motion was defeated by a vote of 19 to 31. Chairman Mahon then directed that all members of the Committee could have access to all information available on the CIA, but that this information could not be removed from Committee premises or discussed with persons not on the Committee. Five days later, on the House floor, Chairman Mahon extended this offer to the entire House, under the same restrictions, including the requirement that any Member requesting access would be asked to sign a pledge of secrecy.

When this bill (H.R. 9861) was considered on the floor on October 1st, Mr. Giaimo offered an amendment as follows:

Under "Other Procurement, Air Force," on page 29, line 17 after "September 30, 1978.", strike the period and insert in lieu thereof: ": Provided, That none of the funds in this appropriation shall be available for expenditure by the Central Intelligence Agency.

As the subsequent debate revealed, the effect of the Giaimo amendment was to disclose the location of all funds for the CIA during this fiscal year. For the first time, the House as a whole was informed both as to the location of CIA funds in appropriations legislation, and as to the maximum amount which the legislation could include for the CIA. If the amendment had been adopted, it appears that some subsequent amendment would have been required to reinstate funds for the CIA, and a specific total for the agency would probably have been disclosed. (see Appendix 6)

One of the arguments offered against the Giaimo amendment was that the House should not take such action until this Committee had made its recommendations for consideration by the House.

The amendment was defeated on a rollcall vote of 147 to 267. (for the text of the floor debate, see Appendix 7) The members of this Com-



mittee voted as follows:

Aye: Mr. Aspin, Mr. Dellums, Mr. Giaimo, Mr. Hayes, Mr. Lehman, Mr. Pike, Mr. Stanton

Nay: Mr. Johnson, Mr. Kasten, Mr. McClory, Mr. Milford, Mr. Murphy, Mr. Treen.

Alternative recommendations

The Committee may recommend that detailed accounts of proposed and actual intelligence expenditures be made public. However, in view of the recent Congressional actions described above, the available options would seem to be two: (1) making no public disclosure of intelligence costs, or (2) making public disclosure of only a single total dollar amount for the CIA only, for other intelligence agencies, or for all intelligence agencies and activities combined.

Arguments in support of such public disclosure would include the following:

1. The public has a right to know at least this much about how their tax dollars are being allocated, if not spent, by the Congress.
2. Disclosure of a single dollar total would be insufficient to be of any value to a potential enemy.
3. The annual budget contains detailed information on defense programs and costs with no discernible damage to the national security.
4. Disclosure of a single total would not necessarily lead to disclosure of more detailed information if the Congress determined that additional disclosures would be unwise.
5. Potential enemies of the United States are already well informed about U.S. intelligence programs, at least to the extent that making public a single dollar total would be of no assistance to them.
6. The greater danger is of excessive secrecy and a consequent lack of accountability of the government to the people.
7. More information on intelligence programs must be available to the entire Congress and the public because budget reviews by Congressional committees have been insufficient for their decisions to be accepted without question.
8. Such disclosure would have the effect of stimulating more effective Congressional oversight of intelligence.

9. Such disclosure is required by the spirit, if not the letter, of the Constitution, specifically, Article I, Section 9, Clause vii, which states:

No Money shall be drawn from the Treasury, but in Consequence of Appropriations made by Law; and a regular statement and Account of the Receipts and Expenditures of all public Money shall be published from time to time.

Arguments in opposition to such public disclosure would include the following:

1. Public disclosure of a single total would be too limited and uninformative to be of any value.
2. But it would be of value to potential enemies who would be able to make accurate deductions from knowledge of a total dollar figure.
3. As a result, the lives of American intelligence officials and agents could be jeopardized.
4. If such disclosure were made annually, the changes in the total from year to year would also be informative to potential enemies.
5. Any disclosure, no matter how limited, would inevitably lead to pressure for the public release of more detailed information in subsequent debates.
6. The Congress and the public can rely on the scrutiny which intelligence agency budgets now receive from Congressional committees.
7. And if individual members have unresolved questions or doubts, they can examine all the committees' records under reasonable security conditions.
8. Any proposal for public disclosure is necessarily a challenge to the probity and conscientiousness of the leaders of the committees which now have jurisdiction over intelligence activities.
9. The Appropriations Committee of the House is in the process of reconsidering and revising its own procedures. The House as a whole should take no action until these reforms have been determined, implemented, and tested.

Authorization of funds for the intelligence agenciesCurrent status

The requirement of annual or periodic authorizing legislation has proven to be a useful device for encouraging oversight and review by the legislative committees of the Congress, and encouraging a responsive attitude on the part of the agencies which are well aware that their continued existence and growth require affirmative Congressional action.

Currently, there is no requirement for annual or periodic authorizations for the following:

Central Intelligence Agency  
Department of State  
    including the Bureau of Intelligence and Research  
Department of Justice  
    including the Federal Bureau of Investigation  
Department of the Treasury  
    including the Internal Revenue Service

There is annual authorizing legislation for both the Department of Defense and the Energy Research and Development Administration, but without specific references to their component intelligence agencies and programs.

Alternative recommendations

The Committee may make no recommendation for the following reasons:

1. committee consideration of authorization bills would expand the number of members privy to classified information and, consequently, increase the risk of unsanctioned public disclosures;
2. floor consideration, even in executive session, would increase the security dangers many times over;
3. because many intelligence agencies and programs have other purposes, the difficulty of isolating intelligence costs would make it impractical to require specific authorizations for all intelligence programs.

Alternatively, as a means of improving Congressional oversight and coordination of the intelligence community, the Committee may recommend:

1. a requirement that no funds may be appropriated for expenditure or obligation by the CIA which have not first been authorized, annually and specifically, for the CIA; and
2. a comparable requirement for other intelligence agencies and/or the intelligence activities of other agencies; or

3. periodic, rather than annual, authorizations.

Notes: 1) Because the Congress does not now appropriate funds for the CIA, a recommendation that CIA funds be authorized cannot be considered in isolation from other aspects of CIA's fiscal arrangements.

2) The Committee may wish to take into account the House committees which would have jurisdiction over any new authorizing legislation, including whether all or part of such jurisdiction should be recommended as part of the mandate of a new oversight committee.

Appropriation of funds for the CIACurrent status

At present, the Congress does not appropriate funds for expenditure and obligation by the CIA. Instead, funds intended for the CIA are appropriated as line items for one or more other agencies, and then transferred to the CIA, pursuant to Section 6(a) of the Central Intelligence Agency Act of 1949. (see Appendix 8) Section 6(a) (50 U.S.C. 403f) follows:

Sec. 6. In the performance of its functions, the Central Intelligence Agency is authorized to --

(a) Transfer to and receive from other Government agencies such sums as may be approved by the Office of Management and Budget, for the performance of any of the functions or activities authorized under sections 403 and 405 of this title, and any other Government agency is authorized to transfer to or receive from the Agency such sums without regard to any provisions of law limiting or prohibiting transfers between appropriations. Sums transferred to the Agency in accordance with this paragraph may be expended for the purposes and under the authority of sections 403a to 403c, 403e to 403h, and 403j of this title without regard to limitations of appropriations from which transferred;

As a consequence of this provision, the Congress does not now vote for appropriations specifically designated for the CIA. The House has known that CIA appropriations have been approved as parts of appropriations for other agencies, but the House has never been informed as to the total amount to be transferred for CIA use. This year, for the first time, the line item containing the CIA's budget was publicly identified. However, the House did not learn how much of that line item total will be transferred to the CIA. (see generally the section above on public disclosure of intelligence costs)

Alternative recommendations

Assuming the Committee wishes to limit or prohibit public disclosure of the CIA's budget, the Committee may make no recommendation concerning appropriations in the belief that funding-by-transfer ensures secrecy more effectively than an appropriation considered in executive session. The Committee may also conclude that the CIA is inevitably confronted by unexpected contingencies, and that the funding-by-transfer arrangement should be retained because it provides for greater flexibility.

Alternatively, the Committee may conclude that these considerations provide insufficient justification for such a unique funding arrangement which, it may be argued, violates the spirit if not the letter of Article I, Section 9, Clause vii, of the Constitution which states:

No Money shall be drawn from the Treasury, but in Consequence of Appropriations made by Law; and a regular Statement and Account of the Receipts and Expenditures of all public Money shall be published from time to time.

If the Committee reaches this conclusion, it may recommend one or more of the following:

1. A requirement that the only funds which may be expended or obligated by the CIA are those which have been specifically appropriated for the CIA or transferred to the Agency pursuant to Section 6(a), as amended;
2. An amendment to Section 6(a) applying to the CIA the same kind of limitations and regulations concerning transfers of funds which now apply generally to other federal agencies; or
3. An amendment to Section 6(a) to limit transfers to and from the CIA in a manner which provides for considerable flexibility in funding and which also recognizes the need for both presidential and Congressional control of accretions to CIA spending authority. For example, Section 6(a) might be amended to read:

Sec. 6. In the performance of its functions, the Central Intelligence Agency is authorized to --

(a) Transfer to and receive from other Government agencies such sums as may be approved by the Office of Management and Budget, for the performance of any of the functions or activities authorized under sections 403 and 405 of this title, Provided, however, that, notwithstanding any other provision of law, no more than ten per cent of the funds appropriated for expenditure or obligation by the Central Intelligence Agency during any fiscal year may be transferred to or from the Central Intelligence Agency during that fiscal year without express, written authorization by the President, such authorization to set out a description of the activity for which the funds are to be used and the scope and duration of that activity; and Provided further, that no such transfer may be made without the prior written approval of the Appropriations Committees of the Senate and the House of Representatives, and without prior notification of the appropriate oversight committees of the Senate and the House of Representatives by the Office of Management and Budget, such notification to be accompanied by the President's written authorization when such authorization is required pursuant to this section.

Control of transfers of funds to and from intelligence agencies in the Department of DefenseCurrent status

No other intelligence agency, including those within the Department of Defense, enjoys the same authority concerning transfers of funds which was given to the CIA under Section 6(a) of the Central Intelligence Agency Act of 1949. (see Appendix 9 for current DOD transfer authority)

Alternative recommendations

Therefore, the Committee may conclude that it need make no recommendation concerning transfers of funds to and from other intelligence agencies.

Alternatively, given the magnitude of Department of Defense intelligence activities and the flexibility necessitated by the likelihood of unexpected contingencies, the Committee may recommend a procedure for authorizing, controlling, and reporting transfers, for example, as follows:

(a) Notwithstanding any other provision of law, no more than ten per cent of the funds appropriated for expenditure or obligation during any fiscal year by the intelligence agencies in the Department of Defense (including the National Security Agency, the Defense Intelligence Agency, the Defense Investigative Service, and the intelligence components of the Army, Navy, and Air Force) may be transferred to or from the accounts of any one of these agencies during that fiscal year without express, written authorization by the President, such authorization to set out a description of the activity for which the funds are to be used and the scope and duration of that activity.

(b) No such transfer may be made without the prior written approval of the Appropriations Committees of the Senate and the House of Representatives, and without prior notification of the appropriate oversight committees of the Senate and the House of Representatives by the Office of Management and Budget, such notification to be accompanied by the President's written authorization when such authorization is required pursuant to this section.